

MARIE A. FIEL, ET AL.

IBLA 77-175

Decided June 6, 1977

77-178

77-179

Appeals from separate determinations of various state offices of the Bureau of Land Management, requesting additional rent prior to issuance of noncompetitive oil and gas leases.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Rentals -- Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

APPEARANCES: K. J. Fiel for Marie A. Fiel; Ed Delsky, pro se; Anthony J. Howard, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

These are consolidated appeals from determinations of the Wyoming and New Mexico State Offices of the Bureau of Land Management (BLM), 1/ requiring payment of the advance first-year's rent

<u>1/</u>	BLM	BLM	
	<u>IBLA Docket No.</u>	<u>Serial No.</u>	<u>Offeror's Name</u>
			<u>Decision Dated</u>
77-175	W-58035	Marie A. Fiel	Feb. 4, 1977
77-178	NM-29387	Ed Delsky	Feb. 7, 1977
77-179	NM-29359	Anthony J. Howard	Feb. 4, 1977

on noncompetitive oil and gas leases so as to comply with the requirement of \$1 per acre imposed by 43 CFR 3103.3-2 effective February 1, 1977, 42 F.R. 1032.

In each appeal, the appellant paid annual rental on the basis of 50 cents per acre. The decisions of the two State Offices of Bureau of Land Management requesting an increase in rental, was based upon a change of regulations in 43 CFR 3103.3-2, increasing the rental on all noncompetitive leases from 50 cents per acre to \$1 per acre, for all leases issued on or after February 1, 1977.

The appellants contend that a change in the rental rate after advertising the parcels at one rate, with no indication of a rate increase, and the acceptance of payment based on the 50-cent rental rate should bind the government to that rate.

[1] As the Board stated in the case of Raymond N. Joeckel, 30 IBLA 32 (1977):

The precise issue raised in the instant appeals came before this Board in Raymond N. Joeckel, 29 IBLA 170 (1977). That decision was again affirmed in Milton J. Lesback, 29 IBLA 316 (1977). Those two decisions contain a thorough review of the law. They held that a lease granted after February 1, 1977, must be at the rate provided for in 43 CFR 3103.3-2. It is enough to quote from a letter from the Secretary of the Interior, as cited in Lesback:

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977, have been treated unfairly under the Amended Regulations, it is important to note there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued. [2/]

For the reasons stated in Joeckel, the appellants were properly required to pay the annual rent as required by 43 CFR 3103.3-2.

---

2/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

Appellant Delsky has requested that his rental payment be returned to him if his appeal were denied. Upon return of the records to the State Office, it will take appropriate action looking to the return of the advance rentals paid by Delsky.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Joan B. Thompson  
Administrative Judge

